IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6617 OF 2005

Mr. Nilesh Bhawanji Katira ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri A.P. Mundargi i/by A.M Sarogi for the Applicant.
Ms M. H. Mhatre, A.P.P. for the State.
Shri I.S. Kini for the Complainant.

WITH
CRIMINAL APPLICATION NO.6593 OF 2005

Mayur N. Chandra ...Applicant.
Vs.
The State of Maharashtra ...Respondent.

Shri A.P.Mundargi i/by Gajendra Jadhav for the Applicant.
Ms Rajeshree Gadhvi, A.P.P. for the State.
Shri I.S. Kini for the Complainant.

CORAM : A. S. OKA, J.
DATE : OCTOBER 21, 2005.

P.C.:

1. Heard the Advocates appearing for the Applicants, the learned A.P.P. for the State and Shri. Kini appearing for the original complainant. These Applications for bail relate to C.R. No.293 of 2005 registered with Mulund Police Station under section 306 read with section 34 of the Indian Penal Code.

2. It is not in dispute that so far as this case is concerned, the chargesheet has not been filed within the statutory period and it is not in dispute

between the parties that as a result of failure to file chargesheet, the Applicants have become entitled to compulsory bail under section 167(2) of the Code of Criminal Procedure, 1973.

3. Shri Kini appearing for the first informant pointed out that though there are clear instances on record of the threats given on behalf of the Applicants to prosecution witnesses, the Investigating Officer is deliberately ignoring those instances and infact, has gone to the extent of making statement to this Court that he does not want to rely upon an Application of a witness which was filed before the Sessions Court in which it was alleged that he was threatened. Shri Kini also pointed out that on the basis of private complaint filed by the same first informant against the Applicants, an order was made for investigation under section 156(3) of the Code of Criminal Procedure, 1973 where offences alleged are under sections 408, 409, 420, 465, 467, 471, 201, 120-B read with section 34 of the Indian Penal Code. He pointed out that a Writ Petition was filed by one of the Applicants in this Court in which a contention was raised that in the present F.I.R. No.293 of 2005, investigation is also being made for the said offences which are the subject matter of the separate

complaint. He has placed on record a copy of the order passed in Writ Petition No.2332 of 2005 on 18th October, 2005 by which the said Petition has been rejected.

4. It is, therefore, necessary to clarify that the order of bail which has been granted in these Applications is confined to the present F.I.R. No.293 of 2005 where offence is under section 306 read with section 34 of the Indian Penal Code.

5. Before completing the order, it must be mentioned on record that on the last date when this Application was heard before this Court, my attention was invited to the order of the Sessions Court in which there is a reference to an Application of Jayesh R. Joshi filed before the Sessions Court who objected the grant of bail to the Applicants on the ground that he was threatened by the Applicants. When a statement was made on the instructions of the Investigating Officer that he does not want to rely upon the said Application, the learned A.P.P. was asked to take instructions as to why the Investigating Officer does not want to rely upon the said affidavit. On instructions of the Investigating Officer, the learned A.P.P. states that the Officer is not aware about the

contents of the said Application. It is impossible to accept the said explanation. Application of Shri. Joshi was filed before the Sessions Court which is referred to in the order of the Sessions Court. The Investigating Officer was present before the Sessions Court and it is impossible to accept that he is not aware about the contents of the said Application. In my view, prima facie, there is a substance in the contentions raised by Shri Kini appearing on behalf of the first informant about the manner in which investigation has been carried out. However, I am not expressing any final opinion as it is for the complainant to adopt appropriate remedy.

6. Hence, I pass the following order:

: O R D E R :

i) Application is allowed as the Applicants are entitled to be enlarged on compulsory bail.

ii) The Applicants shall be enlarged on bail in connection with **C.R.No.293 of 2005 registered with Mulund Police Station,** subject to furnishing a personal bond of **Rs.15,000/- each** with one or two local sureties in the like amount.

iii) The Bail is granted subject to condition that the Applicants will attend the concerned Police Station as and when called upon to do so till the filing of chargesheet.

iv) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) The parties to act upon an authenticated copy of this order.

JUDGE